
HOUSE BILL No. 1880

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-16; IC 31-17-1-3; IC 31-17-4-7.

Synopsis: Performance bonds in family law cases. Requires a court to order the parties in a proceeding concerning child custody, support, or visitation to set a performance bond unless the court finds it is not in the best interests of the child to do so. Specifies that the proceeds of a forfeited bond may be used only to: (1) reimburse a parent for actual expenses incurred in upholding the court's order; (2) pay reasonable fees to locate and return a child; or (3) reimburse a court trustee for reasonable fees and costs. Provides that excess proceeds of a forfeited bond must be used for the child's higher education or maintenance expenses.

Effective: Upon passage.

Frizzell

January 17, 2001, read first time and referred to Committee on Courts and Criminal Code.

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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE BILL No. 1880

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 31-16-1-2.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: **Sec. 2.5. (a) Except as provided in subsection**
4 **(b), whenever a court enters an initial order affecting or**
5 **modifying:**

6 **(1) child custody (IC 31-17-2 through IC 31-17-3);**

7 **(2) child visitation (IC 31-17-4 through IC 31-17-5), including**
8 **"parenting time" under the Indiana parenting time guidelines**
9 **adopted by the Indiana supreme court; or**

10 **(3) child support under this article;**

11 **the court shall require both parents to post a sufficient bond or**
12 **surety to ensure that the parents will comply with the court's**
13 **custody, visitation, or child support orders.**

14 **(b) The court may relieve either or both parents of the**
15 **obligation to post a bond or surety if the court finds that it would**
16 **not be in the best interests of the child to require a bond or surety.**

17 **(c) If, in any action to enforce a child custody, child visitation,**



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or child support order, the court finds:

(1) substantial noncompliance with previous orders; or

(2) a reasonable possibility that either or both parents will not
comply with future orders;

the court may require either or both parents to post a bond or
surety sufficient to ensure compliance with its orders.

(d) A bond or surety required under this chapter must:

(1) be in writing;

(2) be secured by:

(A) at least one (1) resident freehold surety; or

(B) a commercial insurance company; and

(3) substantially comply with the following form:

STATE OF INDIANA)

) SS:

COUNTY OF _____)

IN THE MATTER OF:

Name of Parent (As the Principal)

Name of Parent (As the Obligee)

CHILD:

Name of Child

KNOW ALL MEN BY THESE PRESENTS, that we _____,
as Principal, and _____, as Surety, are held and firmly bound unto
_____, as Obligee, in the penal sum of ____ Dollars (\$____), for the
payment of which well and truly to be made we hereby bind
ourselves and our heirs, administrators, successors, and assigns,
jointly and severally, firmly by these presents.

WHEREAS, an Order was duly made and entered by the above
Court in the State of Indiana, County of _____, dated _____, defining
custody, visitation, and support rights regarding the named
children.

NOW THEREFORE, the conditions of this obligation are such
that:

1. No right of action on this bond shall be granted for the



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use or benefit of any individual, partnership, corporation, or other entity, other than the named Obligee.

2. It is agreed that neither this bond nor the obligation of this bond, nor any interest in this bond, may be assigned without the prior express written consent of the Surety.
3. Payment under this bond shall be conditioned upon the Obligee's, or the representative of the Obligee's filing a motion with the court seeking a declaration of forfeiture of the bond and the Court's finding and entry of a final judgment ordering the Principal and Surety to make such payment. A certified copy of the filing shall be provided to the Surety at its address of record. The Surety shall make payment within thirty (30) days of receiving notification of the final judgment directly to a Trustee appointed by the Court who shall administer the funds in a fiduciary capacity.
4. The Surety shall not be liable hereunder for any amount larger than the face amount of this bond.
5. This bond and the obligation hereunder shall terminate and be of no further effect if the Court order requiring it is modified in any way without the Surety's consent, expires, or this cause is removed to another jurisdiction.
6. The Surety may file a motion with the Court for discharge of this bond and its obligation hereunder for any good cause. Good cause includes, but is not limited to, misrepresentation or fraud in the initial application for this bond, nonpayment of premium, loss of collateral, or resignation of the Indemnitor. The Surety shall give notice of any such motion to the Obligee.

NOW THEREFORE, if the Principal faithfully complies with the requirements and conditions of the Court Order within the limitations and parameters set forth therein, then this Obligation shall be void, otherwise it shall remain in full force and effect.

In witness whereof, each party to this bond has caused it to be executed at the place and on the date indicated below.

Signed, sealed and dated on this ____ day of ____, 20 ____.

Principal: Surety

(Name and address of Principal)

(Name and address of Surety)



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(Signature of Principal)
 (Countersigned by attorney-in-fact)
 (Surety seal)

Witness:

(e) The proceeds of a bond or surety forfeited under this section may only be used to:

- (1) reimburse the nonviolating party for actual costs or damages incurred in upholding the court's order;
- (2) locate and return the child to the residence as set forth in the court's order; or
- (3) reimburse reasonable fees and court costs to the court appointed trustee.

(f) The proceeds of a bond or surety forfeited under this section that are not applied to the expenses described in subsection (e) must be placed in trust to provide for:

- (1) the child's higher education; or
- (2) the support and maintenance of the child upon emancipation.

SECTION 2. IC 31-16-6-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. Upon entering an order under section 1 of this chapter, the court, **as provided in IC 31-16-1-2.5, may order the parties to post a sufficient bond or surety to ensure compliance with the court's order.** ~~provide for such security, bond, or other guarantee that is satisfactory to the court to secure the obligation to make child support payments.~~

SECTION 3. IC 31-17-1-3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) Except as provided in subsection (b), whenever a court enters an initial order affecting or modifying:

- (1) child custody under IC 31-17-2 or IC 31-17-3;
- (2) child visitation under IC 31-17-4 or IC 31-17-5, including "parenting time" under the Indiana parenting time guidelines adopted by the Indiana supreme court; or
- (3) child support (IC 31-16);

the court shall require that both parents post a sufficient bond or surety to ensure that the parents will comply with the court's custody, visitation, or child support orders.

(b) The court may relieve either or both parents of the obligation to post a bond or surety if the court finds that it would not be in the best interests of the child to require a bond or surety.

(c) If, in any action to enforce a child custody, child visitation, or child support order, the court finds:

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(1) substantial noncompliance with previous orders; or
 (2) a reasonable possibility that either or both parents will not
 comply with future orders;
 the court may require either or both parents to post a bond or
 surety sufficient to ensure compliance with its orders.

(d) A bond or surety required under this chapter must:

(1) be in writing;

(2) be secured by:

(A) at least one (1) resident freehold surety; or

(B) a commercial insurance company; and

(3) substantially comply with the following form:

STATE OF INDIANA)
) SS:
 COUNTY OF _____)

IN THE MATTER OF:

Name of Parent (As the Principal)

Name of Parent (As the Obligee)

CHILD:

Name of Child

KNOW ALL MEN BY THESE PRESENTS, that we _____,
 as Principal, and _____, as Surety, are held and firmly bound unto
 _____, as Obligee, in the penal sum of _____ Dollars (\$ _____), for the
 payment of which well and truly to be made we hereby bind
 ourselves and our heirs, administrators, successors, and assigns,
 jointly and severally, firmly by these presents.

WHEREAS, an Order was duly made and entered by the above
 Court in the State of Indiana, County of _____, dated _____, defining
 custody, visitation, and support rights regarding the named
 children.

NOW THEREFORE, the conditions of this obligation are such
 that:

1. No right of action on this bond shall be granted for the
 use or benefit of any individual, partnership,



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corporation, or other entity, other than the named Obligee.

2. It is agreed that neither this bond nor the obligation of this bond, nor any interest in this bond, may be assigned without the prior express written consent of the Surety.
3. Payment under this bond shall be conditioned upon the Obligee's, or the representative of the Obligee's filing a motion with the court seeking a declaration of forfeiture of the bond and the Court's finding and entry of a final judgment ordering the Principal and Surety to make such payment. A certified copy of the filing shall be provided to the Surety at its address of record. The Surety shall make payment within thirty (30) days of receiving notification of the final judgment directly to a Trustee appointed by the Court who shall administer the funds in a fiduciary capacity.
4. The Surety shall not be liable hereunder for any amount larger than the face amount of this bond.
5. This bond and the obligation hereunder shall terminate and be of no further effect if the Court order requiring it is modified in any way without the Surety's consent, expires, or this cause is removed to another jurisdiction.
6. The Surety may file a motion with the Court for discharge of this bond and its obligation hereunder for any good cause. Good cause includes, but is not limited to, misrepresentation or fraud in the initial application for this bond, nonpayment of premium, loss of collateral, or resignation of the Indemnitor. The Surety shall give notice of any such motion to the Obligee.

NOW THEREFORE, if said Principal shall faithfully comply with the requirements and conditions of said Court Order within the limitations and parameters set forth therein, then this Obligation shall be void, otherwise it shall remain in full force and effect.

In witness whereof, each party to this bond has caused it to be executed at the place and on the date indicated below.

Signed, sealed and dated on this ____ day of ____, 20 ____.

Principal: Surety

(Name and address of Principal)

(Name and address of Surety)



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(Signature of Principal)
 (Countersigned by attorney-in-fact)
 (Surety seal)

Witness:

(e) The proceeds of a bond or surety forfeited under this section may only be used to:

- (1) reimburse the nonviolating party for actual costs or damages incurred in upholding the court's order;
- (2) locate and return the child to the residence as set forth in the court's order; or
- (3) reimburse reasonable fees and court costs to the court appointed trustee.

(f) The proceeds of a bond or surety forfeited under this section that are not applied to the expenses described in subsection (e) must be placed in trust to provide for:

- (1) the child's higher education; or
- (2) the support and maintenance of the child upon emancipation.

SECTION 4. IC 31-17-4-7 IS REPEALED [EFFECTIVE UPON PASSAGE].

SECTION 5. [EFFECTIVE UPON PASSAGE] The provisions of this act are severable in the manner provided by IC 1-1-1-8(b).

SECTION 6. An emergency is declared for this act.

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